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EDUCATION CONSOLIDATION AND IMPROVEMENT ACT TECHNICAL AMENDMENTS

JUNE 28 (legislative day, JUNE 27), 1983.—Ordered to be printed

Mr. HATCH, from the Committee on Labor and Human Resources, submitted the following

REPORT

[To accompany S. 1008]

The Committee on Labor and Human Resources, to which was referred the bill (S. 1008) to make certain technical amendments to improve implementation of the Education Consolidation and Improvement Act of 1981, and for other purposes, reports favorably thereon with amendments and recommends the bill as amended do pass.

SUMMARY OF THE BILL

S. 1008, as amended, makes certain technical and clarifying changes to the Education Consolidation and Improvement Act, which contains Chapter 1, providing compensatory education to disadvantaged children, and Chapter 2, the consolidation of federal elementary and secondary education programs. Additionally, S. 1008, as amended, makes certain amendments to other education programs embodied in Public Law 97-35, the Omnibus Budget Reconciliation Act of 1981.

ECIA, enacted as part of Public Law 97-35, was intended both to simplify and consolidate numerous federal education programs. At the heart of ECIA is Chapter 1, the largest single federal education program assisting elementary and secondary education. Chapter 1 was enacted to simplify Title I of the Elementary and Secondary Education Act by removing detailed and prescriptive administrative requirements while preserving the essence of Title I services to disadvantaged and educationally deprived children. Chapter 2 represented a landmark action by Congress to consolidate some 28 elementary and secondary education programs into a single block grant to the states.

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The amendments contained in the bill are intended to resolve lingering questions regarding congressional intent relative to Chapters 1 and 2, eliminate drafting errors and clarify ambiguous language.

Prominent among the amendments are a series of additions aimed at making explicit certain flexibilities which were present in the former Title I law. These amendments essentially reincorporate specific sections of the Title I law. The purpose of these sections was to allow LEA's to "skip" children in greatest need of services as long as those children were being served by other, similar programs. In S. 1008, flexibility implicit in Chapter 1 is made explicit by these additions, but the Committee does not imply that these amendments authorize the reinstitution of the strict ranking requirements of the Title I law.

Other amendments to Chapter 1 provide special flexibility to small school districts in selecting Chapter 1 schools, permit the utilization of Chapter 1 personnel for supervisory duties within an overall limitation on the time those personnel may spend in such roles, and clear up references to the participation of private schools under Chapter 1.

Furthermore, considerable confusion existed over the interpretation of Section 556(b)(2) of ECIA, which requires the identification of children who are educationally deprived and "permits" selection of those in greatest need of special assistance. In numerous discussions with school officials, the interpretation of the word "permits" proved troublesome. To clear up that ambiguity, the Committee bill rewrites Section 556(b)(2) to indicate that, while the range of children who can be served is broad, those served must include those in greatest need of assistance.

Within Chapter 2, several revisions were adopted. Clarifications were made regarding the state certification of Chapter 2 applications from local school districts. School districts receiving limited amounts of Chapter 2 funds were released from the biennial audit requirement but are required to be audited at least once every five years.

In the aftermath of ECIA's passage, numerous questions were raised about the applicability of the General Education Provisions Act. S. 1008 underscores the applicability of most of GEPA to ECIA but specifically exempts those provisions of GEPA which are not applicable to and are clearly superseded by ECIA.

The Committee bill makes other changes to laws outside ECIA. For instance, the bill clears up a technical error in Public Law 97–35 which gave the impression that Section 3(b) payments under the Impact Aid law were to expire at the end of fiscal year 1983. According to the statement of managers in the Conference Report (97–208) which resolved differences between the House and the Senate in the Omnibus Budget Reconciliation Act, these payments were to be continued through fiscal year 1984, but the language in Public Law 97–35 failed to reflect this agreement. Therefore, S. 1008 ensures continued authority for such payments in the 1983–84 school year.

Further overcoming an ambiguity which existed in Public Law 97–35, the bill clearly extends the authorization of the Bilingual Education Act, Title VII of ESEA, through fiscal year 1984 as Congress intended through Section 513(g) of Public Law 97–35.

The Committee also adopted amendments emphasizing the importance of evaluation in assessing the new Chapter 1 law. These amend-

ments expand the evaluation responsibilities of local and state education agencies and add a national assessment of compensatory education, which must be completed by 1987.

S. 1008 makes explicit reference to the state-operated program for migrant children. First, the bill makes concrete congressional intent that no changes are to be made in the definition of currently migratory children or in the determination of employment for a migratory fisherman or agricultural worker. Second, the Committee approved the retention in Chapter 1 of the applicability of comparability requirements and also the maintenance of parental advisory councils for the state-operated migrant programs.

LEGISLATIVE CONSIDERATION

S. 1008 was introduced by Senator Hatch and Senator Stafford on April 7, 1983. On April 14, 1983, the Subcommittee on Education, Arts and Humanities considered the legislation and ordered it reported to the full Committee.

Under Subcommittee agreement, all amendments pending to S. 1008 were deferred to the full Committee markup. On May 5, 1983, the Committee on Labor and Human Resources met to consider the bill, A number of amendments were offered at that time and adopted:

An amendment by Senator Hatch and Senator Stafford, broadening the freeze on migrant education program regulations to include the definitions of "agricultural activity", "fishing activity", "migratory agricultural worker", and "migratory fisherman"; to carry over from the Elementary and Secondary Education Act of 1965 authority for the Secretary of Education to grant waivers under Chapter I to the Territories (not including Peurto Rico); and to make technical changes. The vote on the amendment was:

AYE	NAY
Hatch	Nickles
Stafford	Denton
Quayle	
Humphrey	
Weicker	
Grassley	
East	
Hawkins	
Kennedy	
Randolph	
Pell	
Eagleton	
Riegle	
Metzenbaum	
Matsunaga	
Dodd	

An amendment by Senator Stafford to require state education agencies to evaluate Chapter 1 programs at least every two years and to collect certain data on children served by the programs; to require that the results of these evaluations be considered in the improvement

of agency programs; and to require a national assessment of Chapter 1 compensatory education. The vote on the amendment was:

AYE	NAY
Hatch	Humphrey
Stafford	East
Quayle	
Nickles	
Denton	
Weicker	
Grassley	
Hawkins	
Kennedy	
Randolph	
Pell	
Eagleton	
Riegle	
Metzenbaum	
Matsunaga	
Dodd	

An amendment by Senator Randolph substituting for the annual meeting of parents and school officials called for in Section 4 of S. 1008 an annual requirement identical to that of H.R. 1035. The vote on the amendment was:

AYE	NAY
Denton	Hatch
Weicker	Stafford
Kennedy	Quayle
Randolph	Nickles
Pell	Humphrey
Eagleton	Grassley
Riegle	East
Metzenbaum	Hawkins
Matsunaga	
Dodd	

An amendment by Senator Kennedy conforming the bilingual education program authorization language in the ECIA to the extension of funding through 1984 contained elsewhere in the Omnibus Budget Reconciliation Act. The vote on the amendment was:

AYE	NAY
Stafford	Hatch
Weicker	Quayle
Hawkins	Nickles
Kennedy	Humphrey
Randolph	Denton
Pell	Grassley
Eagleton	East
Riegle	
Metzenbaum	
Matsunaga	
Dodd	

An amendment by Senator Kennedy deleting from S. 1008 clarifying language which would have removed from migrant education programs the carry-over requirement of parent advisory councils. The effect of the amendment is to retain the requirement. The vote on the amendment was:

AYE	NAY
Stafford	Hatch
Weicker	Quayle
Kennedy	Nickles
Randolph	Humphrey
Pell	Denton
Eagleton	Grassley
Riegle	East
Metzenbaum	Hawkins
Matsunaga	
Dodd	

An amendment by Senator Kennedy deleting S. 1008 language which would have relieved migrant education programs from "comparability" requirements. The vote on the amendment was:

AYE	NAY
Stafford	Hatch
Humphrey	Quayle
Weicker	Nickles
Kennedy	Denton
Randolph	Grassley
Pell	East
Eagleton	Hawkins
Riegle	
Metzenbaum	
Matsunaga	
Dodd	

In addition, two amendments were rejected:

An amendment by Senator Randolph deleting from S. 1008 a provision specifying that Section 427 of the General Education Provisions Act, giving the Secretary authority to issue regulations on parental involvement, does not apply to the ECIA. The effect of the amendment would have been to make Section 427 applicable to the ECIA. The vote on the amendment was:

AYE	NAY
Weicker	Hatch
Kennedy	Stafford
Randolph	Quayle
Pell	Nickles
Eagleton	Humphrey
Riegle	Denton
Metzenbaum	Grassley
Matsunaga	East
Dodd	Hawkins

An amendment by Senator Pell adding activities conducted under the National Diffusion Network to the list of programs required to be funded at fiscal year 1981 levels of operations within the Secretary's Discretionary Funds. The vote on the amendment was:

AYE	NAY
Denton	Hatch
Kennedy	Stafford
Randolph	Quayle
Pell	Nickles
Eagleton	Humphrey
Riegle	Weicker
Metzenbaum	Grassley
Matsunaga	East
Dodd	Hawkins

S. 1008 as amended was ordered reported by the Committee on a 17–1 vote as follows:

AYE	NAY
Hatch	Denton
Stafford	
Quayle	
Nickles	
Humphrey	
Weicker	
Grassley	
East	
Hawkins	
Kennedy	
Randolph	
Pell	
Eagleton	
Riegle	
Metzenbaum	
Matsunaga	
Dodd	

S. 1008 represents close collaboration within the Committee and with the House Committee on Education and Labor. It also closely resembles H.R. 7336, a ECIA technical amendments bill which passed both houses in the 97th Congress but was pocket-vetoed by the President after the end of that Congress. Congress therefore had no opportunity to consider that veto. In order to meet some of the criticisms of the President toward H.R. 7336, the most objectionable provisions contributing to the veto were removed when S. 1008 was introduced.

NEED FOR LEGISLATION

The Education Consolidation and Improvement Act was enacted as part of the Omnibus Budget Reconciliation Act of 1981, Public Law 97–35. ECIA attempted to accommodate divergent views regarding the formulation and structure of federal education policy. Chapter 1 simplified the provisions of Title I of the Elementary and Secondary

Education Act in response to comments from members of the education community in the states and localities that Title I had become increasingly prescriptive and detailed. Simultaneously, Congress maintained the identity of compensatory education as a necessary federal initiative. In this regard, the essence of the old Title I program was preserved in the simplified Chapter I law, which continues to undergird the principle of equity in education. Chapter 2 considerably changed the categorical nature of numerous small education programs, the bulk of which were embodied in ESEA, by placing those programs into a consolidated block grant which promotes the discretion of state and local education agencies in matching federal education dollars to needs characteristic of the respective state, region or locality.

In making the transition from the antecedent programs to the new ECIA law, numerous questions were raised by the President, state education leaders, local administrators and other educators regarding provisions of ECIA specifically and Congress' intent generally.

The Committee recognizes that, although two days of hearings were held by the Subcommittee on Education, Arts and Humanities on education consolidation in 1981, the exact provisions of ECIA were not reviewed under normal procedures. In fact, the inclusion of ECIA in the Omnibus Budget Reconciliation Act significantly limited normal public comment on the law. As a result, numerous questions have been raised regarding its specific application.

The Committee further notes that, in moving from an experience where federal directives were explicit, detailed and numerous, to an environment of fewer and less prescriptive regulations, school administrators were understandably reluctant to undertake certain actions without some guidance from the federal government to assure them that they could adapt federal programs to local needs without the threat of unwarranted audit exceptions.

Therefore, the Committee has responded to these concerns by eliminating technical errors, expanding upon incomplete legislative language and clarifying, to the extent possible, ambiguities in interpretation. Also, by restoring the fiscal year 1984 reauthorization date for impact aid Category B payments, the Committee is eradicating any confusion which resulted in the operation of Public Law 97–35 so that fiscal year 1984 appropriations can be made for this program.

PROVISIONS OF THE BILL

Chapter 1

Section 1(a)—As written, ECIA unintentionally excludes preschool migratory children from services under state-operated Chapter 1 programs. This section restores the status quo by not excluding these children.

In addition, statutory language is added to preserve the status quo regarding definitions of "agricultural activity", "currently migratory child", and "fishing activity", as contained in the Title I regulations in effect on June 30, 1982, and of "migratory agricultural worker" and "migratory fisherman", as in effect on the date of enactment. This provision responds to the Department of Education's efforts, in pro-

posed regulations published on December 3, 1982, to limit eligibility for the Chapter I migrant program by changing the definition of "currently migratory child", and by imposing a "primary employment" requirement in the definitions of "migratory agricultural worker" and "migratory fisherman".

Section 1(b)—As presently written, Section 555(d) of ECIA requires that the state education agency keep such records and information as may be necessary for fiscal audit and program evaluation. Recognizing the need for clearer guidance to underscore the value of evaluation, the Committee approved an amendment requiring that state educational agencies conduct an evaluation at least every two years and stipulating the kind of information which must be collected by the SEA for Chapter 1 activities.

Section 2(a)—As written, section 556(b)(1)(C) of Chapter 1 allows school districts to use part of their funds "for services which promise to provide significant help for all such children served by such agency." The reference to "all such children" is ambiguous and could have the effect of permitting funds to be used for all low-achieving children in the district without regard to their residence in a low-income area or for all low-income children without regard to their eductional need.

Section 2(a) restores the status quo from the former Title I legislation by eliminating paragraph (1)(C) of section 556(b). This change removes any ambiguity in the statute and assures that this Act will serve educationally disadvantaged children attending eligible schools.

Section 2(b) allows an exemption from the Chapter 1 school targeting provisions for local educational agencies (LEAs) with a total enrollment of less than 1,000 children. In many rural districts, LEAs have a single school which serves the entire district at the junior or senior high school level. This amendment would make all lower grade schools which "feed" the junior or senior high school eligible for Chapter 1 funds. This would prevent the delay of services to educationally deprived children who would ultimately become eligible to be served. The 1,000 figure appears to be reasonable and would not lead to a violation of the intent, spirit, or outcome of Chapter 1. It would serve to eliminate much unnecessary paperwork, documentation and record keeping for small LEAs.

While this amendment is intended to provide flexibility in terms of targeting school buildings, the Committee wishes to note that within Chapter 1 schools, the children in greatest need of special assistance must be selected to receive Chapter 1 services.

Section 2(c)—By virtue of the use of the word "permits" some question has arisen in Sec. 556(b)(2) over whether or not children in greatest need must be served, or only identified and not necessarily served. Sec. 2(c) clarifies ECIA's intent that these children must indeed be included among those selected for participation. However, Sec. 2(c) does not disturb the ECIA policy of leaving to the local educational agency the decision on how best to reasonably determine who these "greatest needs" children are and in what manner they are to be served. It is not to be inferred from the Sec. 2(c) requirement that "greatest needs" children as a matter of course are further required to receive prior services or different services from other par-

ticipating disadvantaged children, especially in light of the difficulty of objective assessment and the sometimes slight degree of disability which may differentiate a "greatest needs" child from one who is simply "disadvantaged".

Section 2(d)—The Committee-approved evaluation amendment expands the evaluation requirement for local programs contained in Section 556(b)(4) to ensure that local evaluations will be utilized in programs improvement.

Section 3—The Title I statute was very specific in terms of requirements, options, and exceptions for designing and implementing Title I programs. By eliminating much of the detailed and specific language of Title I, Chapter 1 raised questions about whether certain activities previously authorized under Title I could be continued.

Section 3 attempts to clarify this issue by spelling out several options available to local educational agencies under Chapter 1, based on the former provisions of Title I.

First, the amendment permits school districts to serve school attendance areas with substantially higher numbers or percentages of educationally deprived children before areas with higher concentrations of children from low-income families, if approved by the State educational agencies (SEA's) after a finding that such action will not impair the delivery of compensatory education services to low-income students.

Second, the amendment gives local school districts discretion to provide services to educationally deprived children in a school which is not in an eligible attendance area, when the proportion of children from low-income families in such school is substantially equal to the proportion of such children in an eligible school attendance area.

Third, under this section, LEA's may designate a school as eligible, even if it does not otherwise qualify, as long as such school was so designated in either of two preceding fiscal years.

Fourth, eligible school attendance areas or schools need not be served though their proportions of low-income children may be higher than those of other areas or schools which are being served, if the units skipped are receiving services of the same nature and scope from non-federal sources. This "skipping" exception raises the question of whether or not "ranking" is intended to apply to the ECIA. While the ECIA requirement to serve areas of "highest concentrations of low-income children" necessarily implies an assessment of those concentrations and an ordering of schools or areas based on them, it is quite clear that the detailed, prescriptive "ranking" procedure set forth in Title I is to have no application to Chapter I programs under the ECIA. Nor is there any ECIA constraint on LEA's with regard to the priority or degree of services or funds to be given to schools or areas served under Chapter 1, so long as all non-excepted areas with "highest" concentrations of low-income children are served.

Fifth, under this amendment an educationally-deprived child who is transferred to a non-Chapter 1 school may continue to participate in Chapter 1 for the remainder of the same school year in which the transfer occurred.

Sixth, the bill provides that "greatest needs" children need not be served under Chapter 1 if they are receiving similar services from non-federal sources.

Seventh, the amendment authorizes local educational agencies to implement "schoolwide projects" to improve the entire educational program in a school, if at least 75 percent of the students in that school are from low income families and if the project is operated in the same manner as permitted under all of section 133(b) of Title I except for paragraph 4.

Eighth, the amendment continues the Title I provision allowing Title I teachers in public schools to be assigned certain noninstructional duties, as long as these duties do not exceed 10 percent of their total time or the same percentage of total time as other, similar personnel in the school. The 10-percent figure may be calculated by using a week or more as the base period.

The initial version of the ECIA Technical Amendments, S. 112, carried over from Title I a provision allowing LEA's to designate as eligible any school attendance area in which at least 25 percent of the children are from low income families. When introduced into Title I, this option represented a legislative response to an administrative determination under the Title I regulations that low income designation would be allowed only for a 30 percent concentration or above. Since this regulation has no applicability to the ECIA, the 25 percent relaxation would be meaningless in its new context. As Sec. 556 makes clear, LEA's may now designate attendance areas as eligible without regard to predetermined percentages of concentration, as long as these attendance areas are among those "with highest concentration of low income children". Thus it may be that in the proper circumstances areas with concentrations significantly below 25 percent could be designated under the ECIA. For this reason, S. 1008 deletes the "25 percent exception".

S. 112 also contained a paragraph allowing districts to serve for one additional year an educationally deprived child who previously qualified as educationally deprived even though that child may no longer qualify as being "in greatest need". This provision is superfluous in the ECIA context and was omitted in S. 1008 because *any* educationally deprived child may be selected for participation in a Chapter 1 program whether the child was formerly "in greatest need" or not. At long as those in greatest need receive services, so may one or more other educationally deprived children regardless of their past status. The selection decision, within these bounds, and the decision on the relative ordering and degree of services is already within the LEA's discretion without any further legislative authority.

Section 4 clarifies how LEA's are to involve parents in Chapter 1 projects. Section 556(b)(3) of ECIA currently requires assurances by the LEA that its Chapter 1 programs "are designed and implemented in consultation with parents and teachers" of the children being served. The Committee bill adds a new subsection 556(e), which in paragraph (1) calls for an annual meeting to which all parents of eligible students are invited. Both research and intuition confirm that parental consultation and involvement are ordinarily key ingredients in successful educational programs. While the general thrust of the ECIA is to require consultation and leave to LEA's to work out in good faith the mechanisms for that consultation according to local circumstances, still the Committee felt it wise to assure parents of eligible students of at least one opportunity annually to meet with the appro-

priate LEA personnel for an explanation of the programs and activities affecting their children. This initial meeting will also provide an opportunity for such parents to meet each other to facilitate communication among parents, since the primary initiative for formulating parental opinion rests with parents. Because of the benefits of parental familiarity with and support for these programs and activities, the Committee expects that this meeting will be one source of interaction among many, but it continues the policy of giving to the LEA's the discretion over how and when these interactions, including the Section 4 meeting, are to take place. The support which LEA's at their discretion may provide may include training and information for purposes of understanding the instructional program and applicable laws and regulations, meeting space, and, to the extent available to comparable groups, other resources. Nothing in this section is intended to limit any existing rights of parents to communicate with each other and with school officials.

Section 5—This section amends section 557(a) of Chapter 1 to ensure that the provisions for targeting areas and children for services, as they relate to private schoolchildren, are compatible with the provisions for public schools. An omission in ECIA as written might result in school districts having to serve all private schoolchildren who are educationally deprived without regard to the home school attendance areas that are compatible with the school districts' areas of concentration. There was no intent to set forth one criterion of eligibility for public schools and another for private.

The bill, therefore, amends this section so that only those private schoolchildren whose school attendance areas are compatible with LEA's areas of concentration need be served, by referencing back to section 556(b)(1) of Chapter 1.

Section 6—This provision clarifies that the Chapter 1 State agency programs for migrant, handicapped, and neglected and delinquent children are subject to the provision that Chapter 1 funds be used only to supplement, and not to supplant, State and local funds. Section 558(b), as written, unintentially exempts State agency programs from the "non-supplanting" provisions of ECIA.

This amendment rewrites Section 558(b) to require State agencies, along with local educational agencies, to use funds only as a supplement to the non-Federal funds for the education of pupils participating in programs and projects assisted under this chapter.

Section 7—ECIA is ambiguous on the supplanting and comparability requirements for State and local special program funds. This amendment would clarify the limited exclusion from the non-supplanting and comparability requirements. The provision amends section 558(d) to clarify that exclusions for special program funds from both non-supplanting and comparability requirements are permitted only for State compensatory education programs that meet the requirements of section 131(c) of Title I, and to clarify that State or local bilingual, handicapped, and certain State phase-in programs may be excluded from comparability requirements.

Section 8 corrects a technical error by clarifying that the provision of ECIA dealing with allocations to school districts which overlap county boundaries supersedes Title I's similar provision.

Section 9 permits the use of carryover funds to phase out antecedent programs. If all carryover moneys must be transferred for use under the consolidated Chapter 2, SEA's would face severe administrative and accounting problems. Numerous phase-out activities will be required for an effective transition. Specifically, many States will require administrative money to close out antecedent programs authorized by Titles IV–B, IV–C, and V–B of the ESEA of 1965, as amended. Flexibility is needed to either shift State educational agency funds to Chapter 2 purposes or use them to phase out existing programs where appropriate and without necessity of distributing at least 80 percent of those funds to LEA's.

This section amends Section 562(c) to permit SEAs and LEAs that have obligated funds on July 1, 1982 that were appropriated in fiscal year 1981 for use under the antecedent programs to retain these funds for expenditure and use. These funds are available for obligation until September 30, 1983 for purposes of Chapter 2. SEAs would not need to distribute these funds according to the 80 percent pass through and LEAs would not be required to return their unobligated funds to the SEA. Such money is intended to provide for an orderly phasing out of programs which were placed into the block grant. Such clear statutory authority will ensure that States are not subject to future audit exceptions because of the ambiguity of ECIA on this matter. This provision shall not be construed to permit the operation of antecedent programs or to authorize an LEA to defer consolidation or to adversely affect private schoolchildren's participation specified under Chapter 2.

Section 10 sets the Chapter 2 allotment for the outlying areas at one percent of Chapter 2 funds. As written, section 563(a) authorizes an amount "not to exceed one percent." This error would allow the Secretary of Education to fund these territories at a minimal level or not at all. The amendment would make the one-percent reservation for the territories consistent with other education programs, such as Title I.

Section 11 revises the audit requirements affecting ECIA to provide that LEAs receiving less than an average of $5,000 per year under Chapter 2 do not have to be audited more than once every five years. The current requirements in section 1745 of the 1981 Reconciliation Act call for every LEA to be audited at least once every two years. The Committee feels that audits of this frequency would not be realistic or cost effective for SEAs to conduct and would be burdensome for both SEAs and for LEAs receiving small grants. Thus, the Committee bill provides that LEAs receiving these small amounts must be audited at least once every five years instead of two.

Section 12 clarifies the SEA role in certifying applications, a responsibility that is not clear in Chapter 2 as written. This amendment to Section 566(a) states that an LEA may receive its allocation of funds under this subchapter for any year for which its application to the SEA has been certified. The SEA shall certify any such application which meets the requirements established in ECIA. The Committee notes that in certifying these applications, the SEA shall not consider the priorities or merits of any of the local programs as set forth in the local application.

Section 13 makes a technical correction to change "chapter" to "subchapter" and thereby clarify that the school level planning requirements in Section 573(a) apply to only programs under subchapter A of Chapter 2, relating to basic skills development programs.

Section 14 asserts the neutrality of the Federal statute on the issue of State rulemaking. The section states that nothing in ECIA shall be interpreted (1) to authorize State regulations, issued pursuant to procedures as established by State law, applicable to LEA programs or projects funded under ECIA, except as related to State audit and financial responsibilities or (2) to encourage, pre-empt, or prohibit regulations issued pursuant to State law which are not in conflict with the provisions of ECIA. It is not the intent of the Committee amendment to permit State regulations and policies which directly conflict with section 566(c) giving LEA's discretion in the use of Chapter 2 program funds.

This new subsection of ECIA also requires States to identify any State rule or policy relating to this Act as a State-imposed requirement. Although Section 12 of H.R. 1035 clarifies the State role in certifying LEA applications, some LEAs have expressed concern that SEAs could use this certification procedure as a mechanism for excessive regulation of LEA activities. This amendment in Section 14 regarding identification of State rules addresses that concern.

Section 15—The final regulations for ECIA provide for withholding proceedings before the Education Appeals Board but require—because of what the Department interprets as a statutory mandate—that these proceedings be conducted in accordance with the provisions of the Administrative Procedures Act. Apparently the Department construes "on the record" to dictate this result. Congress did not intend such lengthy and time-consuming proceedings, with the attendant burden—particularly under ECIA, an act specifically designed to reduce administrative burden.

In deleting the reference to a hearing "on the record" in Section 592 of the Act, the Committee has no intent of deleting the due process rights of states or local educational agencies. Indeed, the Committee expects the Department to afford any affected state or local education agency full due process protections consistent with regulations issued by the Department under Section 592. However, the Committee does intend by deleting "on the record" to answer in the negative the question of whether the Administrative Procedures Act was intended to apply to the ECIA.

This amendment strikes the words "on the record" from section 592(a), but makes clear that a transcript or recording shall be made of any hearing conducted under this subsection and shall be available for inspection by any person.

Section 16—Section 593(b) sets forth a presumption of SEA compliance under ECIA. There is no comparable provision with respect to LEA's. This was a clear oversight given the purposes of ECIA. This amendment adds language which ensures that any LEA which has attempted in good faith to comply with the State and Federal regulations and interpretations shall be presumed to have complied unless findings of fact by the Secretary overcome such a presumption.

This amendment however, is in no way intended to relieve or change the responsibilities of the SEA's to ensure compliance by LEA's with the provisions of Chapter 1.

Section 17—Section 17(a) clarifies any statutory ambiguity regarding Congressional intent on the applicability of the General Education Provisions Act (GEPA) to ECIA. This provision adds language clearly stating that the applicability of GEPA to ECIA is retained except where specifically made inapplicable or superseded by ECIA. The specific provisions of GEPA that are superseded are as follows:

Section of GEPA:		Superseded by section ECIA
408(a)(1)	Federal regulations	591(a).
426(a)	Technical assistance	591(b).
427	Parental involvement	556(b)(3).
430	Application requirements	556(a) and 564(b).
431A	Maintenance of effort	558(a).
453	Withholding	592.
455	Judicial review	593.

Some question has arisen over the power of state education agencies to withhold funds from local education agencies. Under Section 434(b) of the General Education Provisions Act, the state educational agencies have the authority to withhold ECIA funds from local educational agencies for violations of the Act under the fund accounting and fiscal control responsibilities of sections 435 and 436 of the General Education Provisions Act as made applicable to ECIA.

In addition, a number of state agencies have expressed concern that, although they are given certain monitoring and accounting functions under the ECIA, they do not have the corresponding ability to gather the information necessary to carry out these functions. The Committee emphasizes that the ECIA does grant to the state education agencies the authority to collect such information from the local education agencies as they reasonably need to carry out their mandated duties.

Section 17(b) repeals a portion of the "State Uses of Federal Funds" report required by Section 406A of GEPA. The repealed sections require states to collect and furnish information on the amounts of federal funds received by each LEA, the purposes for which these funds were spent, and the individuals served by these activities, all tabulated with respect to the second preceding fiscal year. According to a letter from Mr. Gary Jones, then Deputy Undersecretary of the Department of Education, "We have examined our records of the requests for data over the years and have found there has been little if any use of these expenditure and beneficiary data." The Committee believes these deletions will make this data collection and reporting effort less burdensome, with no major consequences to its usefulness. Under the other provisions of this section, states will continue to supply information on grants and contracts to LEAs and other agencies and institutions in the state and on the total amount of federal funds to the state.

CONFORMING AMENDMENTS

Section 18 amends Section 142(a), 147, and 152(a) of Title I, all pertaining to the state-operated programs, to revise cross-references in those sections to other sections of Title I made inapplicable by ECIA.

Unintentionally, ECIA made cross-reference to section of state-operated programs under Title I which could be interpreted to in-

corporate the program requirements contained in the subparts of old Title I rather than merely the amount of and eligibility for grants.

This section amends Title I to reflect the requirements cited in ECIA regarding designation of attendance areas and children to be served.

By amendment, the Committee continues to require comparability among schools within an LEA where migrant education programs supported by Chapter 1 are operated. This requirement will add no new burden on school districts. In fact, where regular Chapter 1 programs are being operated, comparability assurances already are required by law. Also, in migrant summer programs or in programs operated separately by non-profit agencies, comparability is not an issue.

The Committee wants to ensure that, where migrant education programs funded by Chapter 1 are operated in districts where comparability has not been achieved among schools, comparability should exist as required by Section 558(c) of Chapter 1. In this manner, migrant children will be assured that they will be placed in programs in a school which offers a level of regular services comparable with those offered by other schools in that district.

In approving ECIA, Congress eliminated the requirement for parental advisory councils for regular Chapter 1 programs as stipulated by Section 125 of Title I of ESEA. As originally introduced, S. 1008 eliminated this requirement for the state-run migrant program as well. The Committee, however, approved an amendment reinstituting the migrant parental advisory council requirement in the belief that migrant children and parents, because of their mobility and circumstances, have a special need for a guaranted parental advisory process and that this process should be required by the Chapter 1 law.

Section 19 of the bill inserts in Section 553 of ECIA a "hold harmless" provision currently found in Section 514 of the ECIA. This paragraph specifies that the Section 117 ESEA concentration grants will be funded in proportion to their fiscal year 1980 share of funds as described in the statute. These grants have not been funded for the last two years and it is the Committee's intent by transferring the hold harmless language into the body of the ECIA to strengthen it and indicate its intent that it be applied.

Section 20 clarifies ambiguities within the 1981 Reconciliation Act (Public Law 97–35) by clearly extending the Bilingual Education Act, Title VII of the Elementary and Secondary Education Act, through fiscal year 1984.

Congress intended that this program be authorized through 1984, as evidenced by section 513(g) of Public Law 97–35, which states that the appropriation of Title VII for fiscal year 1984 shall not exceed $139,970,000. However, in section 528 of that Act, the general extension of authorizations through fiscal year 1984, Title VII was inadvertently omitted. This provision of H.R. 1035 adds the Bilingual Education Act to the list of extended programs in section 528, thereby assuring that Title VII will be authorized through fiscal year 1984, the same as most of the other elementary and secondary education programs.

Section 21(a) makes conforming amendments to Section 565(a) of ECIA to provide for the consistent use of the term "private, nonprofit school" where appropriate in the Act.

Section 21(b), an amendment accepted by the Committee, continues the territorial waiver provision which was contained in Section 1003 (a) (1) of ECEA and makes that provision applicable to Chapter 1. The effect of the amendment would allow the Secretary to waive certain requirements of Chapter 1 as they apply to Guam, American Samoa, the Virgin Islands, the Northern Marianas, or the Trust Territory of the Pacific Islands if those requirements are deemed inappropriate or impractical because of conditions peculiar to those jurisdictions.

Section 22—The Committee firmly believes that, in the new less-regulated atmosphere in which Chapter 1 functions, it is even more important to ensure that this program continues to improve the education offered to disadvantaged and educationally deprived children. In order to make this judgment, the Committee accepted an amendment requiring that a national assessment of compensatory education be completed by January 1, 1987. This assessment, therefore, would be available to Congress prior to the expiration of the authorization for ECIA.

The Committee made provision that the study be independently conducted under the auspices of the National Institute of Education and has insisted that NIE consult with this Committee and its counterpart in the House to ensure that the assessment design and implementation will be methodologically sound.

The Committee placed limitations on the amount of funds which can be used to support this assessment, but it ha snot provided an additional authorization for this endeavor. In fact, the amendment stipulated that funding for this project come from funds otherwise available to NIE.

In this regard, however, the Committee recognizes that funds are made available under Chapter 1 for evaluation and studies. These funds are used predominantly to support regional technical assistance centers, which assist state and local officials in implementing Chapter 1 and evaluating its effect. Yet, a portion of these funds are retained specifically to evaluate Chapter 1, and in line with the objectives of this evaluation, the Committee believes that funding for the national assessment prescribed by this section could come from the account for Chapter 1 evaluation and studies.

Section 23 makes several revisions to the impact aid program, which provides assistance to schools in areas affected by Federal activity.

First, the bill unequivocally extends the so-called "Category B" payments through fiscal year 1984. These payments provide funds for the education of children whose parents either live or work on Federal property, unlike Category A children, whose parents both live and work on Federal property. Due to a drafting error in the Reconciliation Act, the Category B payments were to be eliminated at the end of fiscal year 1983, unlike the rest of the impact aid legislation which expires at the end of fiscal year 1984. This mistake unintentionally subverted the clear understanding of the House and Senate conferees that "B" payments would continue through fiscal year 1984, as explained in the statement of managers in conference report 97–208 (book 2, page 273). The amendment rectifies this mistake and extends the "B" payments through fiscal year 1984, when the rest of the impact aid law is up for reauthorization.

Second, the bill addresses a situation peculiar to Hawaii. As the only State in the Union consisting of a single school district, Hawaii's impact aid allocations are based on a Statewide calculation. This unique system has detrimental results, however, when the formula used to distribute impact aid has a concentration factor. For the past few years, the Appropriations Committee has adopted formulas which require school districts to have certain minimum concentrations of "A" or "B" children to qualify for higher payment rates. The Administration has also proposed a formula with a concentration factor. Hawaii is adversely affected by these formulas because its statewide concentration of "A" students is only 10.3% not enough to qualify for "Super A" eligibility (20% or more A students). However, the Central Oahu administrative district in the State has a concentration of 36.4% "A" students, making it very heavily impacted.

The amendment would require that if legislation with a minimum concentration formula for impact aid is enacted after March 31, 1983, the impact aid allocation for any State of the Union with a single school district will be determined by considering the State's individual administrative units as local educational agencies. However, the State's impact aid funding cannot increase more than 10% per year for fiscal years 1984, 1985 or 1986, as a result of this amendment.

Third, the bill corrects an incorrect section reference in section 505(a)(1) of the Omnibus Budget Reconciliation Act of 1981, relating to the authorization for impact aid disaster assistance.

The final section of the bill declares the effective date of this legislation to be July 1, 1983. However, during the period from July 1, 1982 to June 30, 1983, recipients of ECIA funds are to be considered in compliance with the law if they follow the provisions of ECIA as enacted or the provisions of these technical amendments. This latter provision is necessary to dispel any confusion about the flexibility available in Chapters 1 and 2 and to ensure that recipients are not subjected to unintentional audit exceptions due to ambiguities in the original ECIA.

Section-by-Section Analysis

Section 1(a)—State Migrant Programs

Amends Section 55(b) of ECIA—To include pre-school migratory children as eligible participants in the State program for the migratory under Chapter 1.

Specifies that the existing definition of "currently migratory child" must continue to be used in Chapter 1 regulations.

Specifies that the existing definitions of "agricultural activity" and "fishing activity" must continue to be used in Chapter 1 regulations.

Stipulates that no additional definition of "migratory agricultural worker" or "migratory fisherman" may be applied other than the definition in effect on the date of enactment of this subsection.

Section 1(b)—State Evaluation

Amends Section 555—To require that state education agencies evaluate the Chapter 1 program at least every two years and that the SEA collect data on Chapter 1 by race, gender, age and grade-level.

SECTION 2(a)—APPLICATION ASSURANCES

Amends Section 556(b)—To eliminate provision allowing some Chapter 1 funds to be used to serve "all such children."

SECTION 2(b)—RURAL DISTRICT RELIEF

Amends Section 556—To allow an exemption from targeting for an LEA with a total enrollment of less than 1,000 children.

SECTION 2(c)—SELECTION OF CHILDREN

Amends Section 556(b)—To require that, from among the educationally deprived children selected to be served, those children who have the greatest need for speical assistance must be included.

SECTION 2(d)—LOCAL EVALUATION

Amends Section 556(b)(4)—To ensure that the local evaluations already required must be used to improve local Chapter 1 programs.

SECTION 3—FLEXIBILITY TO CONTINUE TITLE I-TYPE EXPENDITURES

Amends Section 556—To clarify that LEAs may continue to carry out certain activities previously authorized under Title I of ESEA.

SECTION 4—PARENTAL INVOLVEMENT

Amends Section 556—To require LEAs to call an annual meeting of Chapter 1 parents to explain the program; and to allow LEA's to provide support for parental involvement activities desired by parents.

SECTION 5—AREAS FOR SERVICES TO PRIVATE SCHOOL CHILDREN

Amends Section 557(a)—To make services for private school children compatible with LEA's attendance areas and criteria for services.

SECTION 6—APPLICATION OF NONSUPPLANTING RULE TO STATES

Amends Section 558(b)—To clarify that State agency programs are subject to this provision.

SECTION 7—EXCLUSIONS OF SPECIAL PROGRAM FUNDS

Amends Section 558(d)—To exclude State and local funds expended for State and local compensatory education programs from the nonsupplanting and comparability requirements and to exclude only from comparability determinations bilingual and handicapped education program and certain State phase-in program funds.

SECTION 8—OVERLAP IN COUNTY BOUNDARIES

Amends Section 558(e)—To clarify that the provisions of ECIA dealing with allocations to school districts which overlap county boundaries supersede ESEA's similar provisions.

SECTION 9—PHASEOUT AND TRANSITION EXPENSES

Amends Section 562(a)—To permit use of carry-over funds to phase out antecedent programs.

SECTION 10—STATE ALLOTMENTS

Amends Section 563(a)—To set allotment for territories at one percent of Chapter 2 funds.

SECTION 11—AUDIT REQUIREMENT OF SMALL LEAS

Amends Section 564(a)—To provide for five year audits of LEAs receiving less than an average of $5,000 each year under Chapter 2.

SECTION 12—REQUIREMENT FOR STATE CERTIFICATION OF LEA APPLICATIONS

Amends Section 566(a)—To clarify SEA role in certifying applications.

SECTION 13—SCHOOL LEVEL PROGRAMS

Amends Section 573(a)—To change "chapter" to "subchapter".

SECTION 14—STATE RULEMAKING

Amends Section 591—To add a new subsection requiring States to identify any State rule or policy relating to this Act as a State imposed requirement.

SECTION 15—WITHHOLDING OF PAYMENTS

Amends Section 592(a)—To delete language resulting in application of the Administrative Procedures Act.

SECTION 16—JUDICIAL REVIEW

Amends Section 593(b)—To add presumption of LEA compliance language.

SECTION 17(a)—APPLICATION OF GEPA

Amends Section 596—To clarify any statutory ambiguity regarding Congressional intent on the applicability of GEPA to ECIA.

SECTION 17(b)—STATE USES REPORT

Amends Section 406A of the General Education Provisions Act to repeal certain provisions of the "State uses of Federal funds report" authorized by that section. These repealed provisions concern local uses of funds and individuals served.

SECTION 18—CORRECTION OF ESEA TITLE I REFERENCES

Amends Section 142(a), 147 and 152(a) of Title I to correct cross-referencing in the state-operated programs to sections outside the state-operated programs that have been repealed under ECIA.

SECTION 19—CONCENTRATION GRANTS

Amends Section 553—To ensure that concentration grants are funded in the same ratio to the total Chapter I appropriation as the amount available under Section 117 of ESEA in fiscal year 1980 bore to the total Title I of ESEA appropriation for fiscal year 1980.

SECTION 20—BILINGUAL EDUCATION

Amends Section 528 of the Omnibus Budget Reconciliation Act to clarify that the Bilingual Education Act is extended through fiscal year 1984.

SECTION 21(a)—CONFORMING AMENDMENTS

Amends Section 565(a) of ECIA—To provide for the consistent use of the term "private, nonprofit" school where appropriate in the Act.

SECTION 21(b)—TERRITORIAL WAIVER

Amends Section 1003(a)(1) of ESEA—To make the territorial waiver provision of ESEA applicable to ECIA.

SECTION 22—ASSESSMENT OF COMPENSATORY EDUCATION

Creates a new section in Chapter 1—To require the Secretary to conduct a national assessment of compensatory education to be submitted to Congress by January 1, 1987.

SECTION 23—IMPACT AID

Corrects a drafting error in The Omnibus Education Reconciliation Act of 1981. Ensures that the authorization for School Construction Assistance in cases of disaster is consistent with prior law.

Extends the authorization for section 2(b) payments under impact aid through fiscal year 1984. Due to a drafting error in the Omnibus Reconciliation Act of 1981, Category B payments were inadvertently eliminated at the end of fiscal year 1983.

Requires that if legislation is enacted setting a minimum concentration formula for impact aid, the allocation for any State with a single school district (excluding the territories) will be determined by considering the State's individual administrative units as local educational agencies; however, this provision cannot result in the State gaining more than 10 percent per year in impact aid for fiscal years 1984, 1985, and 1986.

SECTION 24—EFFECTIVE DATE

An amendment to provide maximum flexibility to State and local education agencies so that they are not subjected to unintentional audit exceptions because of the ambiguity associated with the transition to ECIA.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., May 17, 1983.

Hon. ORRIN G. HATCH,
Chairman, Committee on Labor and Human Resources, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has examined the federal cost impact of S. 1008, an amendment to the Education Consolidation and Improvement Act (ECIA) of 1981, as ordered reported by the Senate Committee on Labor and Human Resources. Based on our analysis, there would be no increase in federal costs as a result of passage of this bill.

The amendments relating to the ECIA in S. 1008 are to improve the implementation of that Act, which goes into effect this year, by clarifying certain provisions. This bill does not change current authorization levels or total funds allocated to states. It does, however, affect the distribution of funds among and within states. This bill also clarifies the authorization for impact aid.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

JAMES BLUM
(For Alice M. Rivlin, Director).

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